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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,066	01/05/2005	John Riccotta	788-22 PCT US	3244
28249 7590 06/21/2007 DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. SUITE 702 UNIONDALE, NY 11553			EXAMINER STEWART, JASON-DENNIS NEILKEN	
			ART UNIT 3709	PAPER NUMBER
			MAIL DATE 06/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/501,066

Applicant(s)

RICCOTTA ET AL.

Examiner

Jason-Dennis Stewart

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9 July 2004.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Figure 1, # 26. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 616, Figure 21a, Figure 21b, Figure 21c. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3709

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6,7,12,13,15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Taheri 5,843,169, which teaches the invention as claimed. Taheri teaches a shaft 11, an expansion member 25, and an operatively connected fastener array 14. Taheri also teaches that the fastener array 14 is substantially annular and is releasably secured to the peripheral portion the expansion member 25 (col. 2, 1.14). Taheri also teaches a biocompatible member (col. 4, ll. 35-37) being mounted about the expansion member 25, which is an inflatable balloon. Taheri further teaches a means for inflating and deflating the balloon (col.3, ll. 55-58) that will secure a substantially tubular vascular graft 60 within a blood vessel 61. Taheri also teaches a balloon catheter 15 that is positioned at least partially within the vascular graft (fig. 6a-6e).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3709

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri 5,843,169 i.v., Fogarty et al. 6,193,745. Taheri teaches the invention as claimed and as discussed above. However, Taheri does not teach the following claimed limitation taught by Fogarty: fasteners adhered to expansion member by an adhesive 200. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Taheri i.v. Fogarty in order to enhance the liner/frame attachment as taught by Fogarty (col. 17, ll.42-47).

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri 5,843,169 i.v., DiMatteo et al. 6,312,457. Taheri teaches the invention as claimed and as discussed above. However, Taheri does not teach the following claimed limitation taught by DiMatteo: a biocompatible tape (col.5, ll.34-35). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Taheri i.v., DiMatteo in order to bond the exterior surface of graft to interior of the blood vessel as taught by DiMatteo (abs).

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri 5,843,169 i.v., Barone et al. 5,360,443. Taheri teaches the invention as claimed and as discussed above. However, Taheri does not teach the following claimed limitation taught by Barone: fastener array arranged in overlapping fashion (165). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Taheri i.v., Barone in order to secure a graft to the aorta as taught by Barone (abs).

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri 5,843,169 i.v., Barone et al. 5,360,443, and further i.v., Lazarus 6,702,844. Taheri i.v. Barone teaches the invention as claimed and discussed above. However, Taheri i.v. Barone does not teach the following claimed limitation taught by Lazarus: staple having a base 60 and penetrating legs 62,64 extending from the base. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Taheri i.v. Lazarus, and further i.v., Lazarus to facilitate engagement with the lumen of a blood vessel as taught in Lazarus (col. 4, ll.49-50).

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri 5,843,169 i.v. Chuter et al. 5,720,0776. Taheri teaches the invention as claimed and as discussed above. However, Taheri does not teach the following claimed limitation that is taught by Chuter: stent 6. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Taheri i.v. Chuter to conform the graft to the wall of the vessel lumen as taught by Chuter (abs).

11. Claims 16,17,19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri 5,843,169 i.v. Blomme 6,911,035. Taheri teaches the invention as claimed and as discussed above. However, Taheri does not teach the following claimed limitations taught by Blomme: A staple array having an annular configuration 10,20, a partial overlapping relationship Fig. 1a, Fig. 2, and a substantially tubular graft (title). It would have been obvious to one of ordinary skill in the art at the time of the invention to

Art Unit: 3709

modify Taheri i.v. Blomme in order to connect of tubular vascular prosthesis to a blood vessel as taught by Blomme (title, abs).

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, per the Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason-Dennis Stewart whose telephone number is (571)270-3080. The examiner can normally be reached on M-F (alt Fridays off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571)272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3709

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS

*James H. Smith*  
06/18/07

*Ehud Gartenberg*

**EHUD GARTENBERG**  
**SUPERVISORY PATENT EXAMINER**

6/18/07